

REMARKS

Claims 1-31 and 37-46 are pending in the application. All pending claims stand rejected under the judicially created doctrine of double patenting as being unpatentable over claims 1-37 of U.S. Patent No. 6,839,829.

The Office Action dated July 19, 2005 states as follows:

"The combination of claims 12-13, 18 in Patent 6,839,829 are equivalent to the pending claims 19-24 of Application '611. The pending claims 13-18 and 38-46 of Application '611 are equivalent to the combination of claims 19-22 of patent '829. The language of the two claims is substantially [sic] identical. All of the structural elements of the patent claims are present in the pending claims, defined with either identical or equivalent language. Additionally, the functional language, although varying in syntax, reflects identical operation, purpose, application, and environment."

Applicants respectfully disagree. Applicants believe that the claim language of the present application is neither substantially identical nor equivalent. Applicants also believe that the functional language of the application does not reflect identical operation, purpose, application, and environment.

For example, the claims of the cited patent recite that "taking over ... is performed without re-registering the cable modem or obtaining a new IP address ..." However, the independent claims of the present application do not recite this limitation. Rather, the independent claims of the application require that the cable modem/host is informed of an upstream channel of the protection CMTS. Therefore, at least in this regard, the claim language of the present application is neither substantially identical nor equivalent to those of the cited patent. It is noted that various other portions of the pending claims are neither substantially identical nor equivalent to the claims of the cited patent. Therefore, Applicants would like to point out that the above-identified characterization of the pending claims in the Action is not correct.

However, to expedite prosecution without narrowing the scope of protection, Applicants submit a terminal disclaimer under 37 CFR § 1.321 concurrently herewith. Therefore, Applicants respectfully submit that all pending claims are in condition for allowance, and respectfully requests a Notice of Allowance at an early date. If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 510-663-1100.

Applicants believe that no fees are due in connection with the filing of this Response. However, if any fees are due, the Commissioner is hereby authorized to charge such fees to Deposit Account 500388 (Order No. CISCP122).

Respectfully submitted,  
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